

ASSEMBLY BILL

No. 1609

Introduced by Assembly Member Spitzer

February 21, 2003

An act relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1609, as introduced, Spitzer. Public contracts: design-build-operate.

Existing law sets forth the requirements for the solicitation and evaluation of bids and the awarding of contracts by public entities for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement. Existing law authorizes specified state agencies, cities, and counties to implement alternative procedures for the awarding of contracts on a design-build basis.

This bill would make legislative findings and declarations, including that the single-step design-build-operate process is an attractive and valuable alternative to a public entity in comparison to the existing 3-step process of design-bid-build and then the separate operation of the project. This bill would declare the Legislature's intent to define the design-build-operate delivery system for use by public entities, and to authorize the full scope of design, construction, equipment, and operation awarded to a design-build-operate entity in a single funding phase, as provided.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares that it is
2 in the best interests of the State of California and state, regional,
3 and local public entities to construct, modernize, retrofit, replace,
4 improve, rehabilitate, renovate, convert, and repair public works
5 of improvement in a cost-efficient manner that represents the best
6 overall value to the taxpayers. These public works of improvement
7 include, but are not limited to, brownfields, greenwaste, water
8 supply, treatment, distribution and recycling, wastewater, sewage
9 treatment and disposal, transportation, power, and energy
10 infrastructure projects. In order to accomplish this goal, state,
11 regional, and local public entities, including, but not limited to, the
12 State of California and California agencies, cities, towns, counties,
13 chartered cities and counties, local agencies, special districts, joint
14 powers authorities, transportation commissions or authorities,
15 land governmental subdivisions, districts, and public, quasi-public
16 or municipal corporations, must have the authority and ability to
17 utilize the best possible project delivery procurement process
18 available.

19 (b) The Legislature finds and declares that the single-step
20 design-build-operate process is an attractive and valuable
21 alternative to a public entity in comparison to the existing
22 three-step process of design-bid-build and then the separate
23 operation of the project. The Legislature finds and declares that the
24 single-step design-build-operate process is also an attractive and
25 valuable alternative to a public entity in comparison to the existing
26 design-build process available for certain select public works of
27 improvement and then the separate operation of the project and
28 also for contract operations of existing municipal systems with
29 incidental design-build projects.

30 (c) The Legislature further finds and declares that the
31 single-step design-build-operate process offers an attractive and
32 valuable alternative to a public entity when the public entity
33 desires that a single private entity contract to take over the
34 operation and maintenance of a public entity's utility, municipal
35 system, or other infrastructure, facility, or system, as well as the
36 design, construction, and administration of any improvements,
37 capital or otherwise, to the utility, municipal system, or other



1 infrastructure, facility, or system at any time during the term of the
2 operations and maintenance contract.

3 The design-build-operate process offers significant advantages
4 over traditional design-bid-build and design-build processes. The
5 design-build-operate process can improve the project delivery and
6 operation by: accelerating delivery schedules; shifting
7 management risk from the public entity to the
8 design-build-operate team; increasing cost savings due to
9 improved coordination and communication between the project
10 architect, contractor, and operator; minimizing change orders
11 through early collaboration between design, construction, and
12 operation disciplines; minimizing the project's life-cycle costs;
13 improving the project's reliability, performance, and operational
14 efficiencies; and placing accountability and responsibility for the
15 project's design, construction, and operation in a single
16 design-build-operate team or entity.

17 (d) The Legislature has recognized the merits of a
18 design-build-operate delivery system in the past by authorizing its
19 use for fee-producing infrastructure projects and high-speed rail
20 services. The design-build-operate delivery system also has been
21 approved for use by public entities in other states, as well as by the
22 federal government.

23 (e) It is, therefore, the intent of the Legislature to define the
24 design-build-operate delivery system for use by state, regional,
25 and local governmental entities when these entities deem the use
26 of that system to be in the best interests of the public.

27 (f) It is the intent of the Legislature that the full scope of design,
28 construction, equipment, and operation awarded to a
29 design-build-operate entity shall be authorized in a single funding
30 phase. The funding phase may be authorized concurrently with, or
31 separately from, the phase that authorizes the public entity to
32 prepare a set of documents setting forth the scope of the individual
33 project, including, but not limited to, the creation of the
34 performance specifications, preliminary plans or building/facility
35 layouts or other information deemed necessary to describe
36 adequately the public entity's needs.

37 (g) It is the intent of the Legislature that, notwithstanding any
38 law to the contrary, only the provisions set forth by this act shall



- 1 govern design-build-operate delivery systems, unless specifically
- 2 stated otherwise.

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